

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE No.50 of 1994****For Approval and Signature:****HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-****HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

COMMISSIONER OF INCOME-TAX - Applicant(s)**Versus****PRITHVIRAJ BH00RCHAND - Respondent(s)****Appearance :**

MR TANVISH U. BHATT for Applicant(s) : 1,

MR MANISH J.SHAH FOR MR JP SHAH for Respondent(s): 1,

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA**and****HONOURABLE MS.JUSTICE H.N.DEVANI****Date : 15/09/2005****ORAL JUDGMENT****(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)**

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following common question under section 256(1) of the Income Tax

Act, 1961 (the Act) for the Assessment Years 1984-85, 1985-86 and 1986-87.

“Whether, the Appellate Tribunal is right in law and on facts in setting aside the order made by the Commissioner of Income-tax u/s.263 of the Act whereby he had directed the IT0 to pass a fresh order withdrawing the deduction granted u/s.80-I?”

2. The assessee is an individual. The Assessment Years are 1984-85, 1985-86 and 1986-87 and the relevant accounting periods are Samvant Years 2039, 2040 and 2041 respectively. For the years under consideration the Assessing Officer allowed deduction under Section 80I of the Act. The Commissioner of Income Tax after going through the records came to the conclusion that the orders passed by the Assessing Officer for the aforesaid years are erroneous and prejudicial to the interest of the revenue. He, therefore, in the exercise of powers under Section 263 of the Act, directed the Assessing Officer to pass a fresh order withdrawing

deduction granted to the assessee under Section 80I of the Act in respect of all the three years. The Commissioner of Income Tax was of the view that the assessee did not fulfill the requirements of clause (iv) of sub-section (2) of Section 80I of the Act because though the assessee was carrying on industrial activities without the aid of power, the assessee was not employing 20 workers as required by law. The Commissioner was of the view that as the assessee was procuring labourers on contract system on wages from one M/s.Ambica Screen Printing Contractor, there was no employer-employee relationship between the assessee and the workers working for the assessee, and that the other benefits also were not paid directly by the assessee but were paid through the contractor hence, the pre-conditions for applicability of Section 80I of the Act were not satisfied. Accordingly, he held that the assessee was not entitled to get deduction under section 80I of the Act.

3. The assessee carried the matter in appeal before the Income Tax Appellate Tribunal. The Tribunal, for the reasons stated in its order dated 21/06/1983, allowed the appeals of the assessee for all the three years.
4. Heard Mr.Tanvish U.Bhatt, learned Standing Counsel for the revenue and Mr.Manish J.Shah, learned Advocate on behalf of the respondent-assessee.
5. Mr.Bhatt supported the order of the Commissioner of Income Tax and submitted that as the assessee was obtaining labourers on contract system on wages, there was no relationship of employer-employee, between the assessee and the workers working for the assessee, and that other benefits were also paid through the contractor, hence, it could not be said that the workers were employed by the assessee, therefore, the requirements of Clause (iv) of sub-section (2) of Section 80I of the Act were not fulfilled.

Hence, the assessee was not entitled to the benefit of deduction under Section 80I of the Act.

6. As can be seen from the order of the Tribunal, the Tribunal has found that it is not disputed that the assessee was carrying on his business activities without the aid of power and had employed more than 20 workers for all the years under consideration, and that, these labourers were employed on contract basis from one M/s. Ambica Screen Printing Contractor. The Tribunal referred to the definition of 'worker' as defined under the Factories Act, 1948 as well as the definition of the words 'employer' and 'employee' as defined under Section 2(e) and Section 2(f) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (the EPF Act). The Tribunal observed that for the purpose of the Factories Act, 1948 the definition of 'worker' includes a person employed through contractor also. The Tribunal observed that the

word 'employer' as defined in the EPF Act includes a person who has the ultimate control over the affairs of the workmen. That the word 'employee' as defined in the said Act includes any person who gets his wages directly or indirectly from the employer and also includes any person employed by or through a contractor. The Tribunal, therefore, held that the payment of wages directly by the employer was not the paramount criteria for establishing employer-employee relationship.

7. The Tribunal also observed that Section 80I of the Act is a beneficial provision and hence the same cannot be interpreted in so narrow a manner as to deprive the assessee of the benefit extended by the legislature. The Tribunal found as a matter of fact that the Industrial Undertaking of the assessee employs more than 20 workers; the assessee has the ultimate control over the affairs of the establishment; it is the assessee who is responsible to the workers in

case of an accident and that the assessee can let off workers at any time, if he so desires. Dealing with the contention of the revenue that the assessee was claiming exemption from the Contributory Provident Funds etc., the Tribunal observed that the provisions of Section 32 of the EPF Act cast the responsibility upon the contractor to recover the contribution payable by such employee who was employed through the contractor and to pay the same to the principal employer together with equal amount of contribution. The Tribunal, therefore, held that the same could not be held against the assessee for denying him the benefit under Section 80I(2)(iv) of the Act. The Tribunal held that the assessee was employing 20 workers in its industrial undertaking as contemplated by clause (iv) of Section (2) of Section 80I of the Act and as such was entitled to the benefit of the provisions of Section 80I of the Act.

8. Sub-section (1) of Section 80I of the Act provides that an assessee shall be entitled to a deduction of amount equal to twenty per cent of its profits and gains where the the gross total income of such assessee includes profits and gains derived from an industrial undertaking. Sub-section (2) of Section 80I of the Act provides for the conditions which are required to be fulfilled by an industrial undertaking for being entitled to the benefit of sub-section (1) of Section 80I of the Act. Clause (iv) of sub-section (2) lays down the condition that where the industrial undertaking manufactures or produces articles or things, it should employ ten or more workers when the manufacturing process is carried on with the aid of power, or employ twenty or more workers where the manufacturing process is carried on without the aid of power.
9. A plain reading of Clause (iv) of sub-section (2) of Section 80I of the Act, makes it apparent

that to be eligible to get the benefit of deduction under the provisions of Section 80I(1) of the Act an assessee is required to fulfill the following conditions:

- (i) It should be an industrial undertaking manufacturing or producing articles or things;
- (ii) It should employ ten or more workers in a manufacturing process carried on with the aid of power; or

It should employ twenty or more workers in a manufacturing process carried on without the aid of power.

In the facts of the present case, there is no dispute that the industrial undertaking of the assessee manufactures or produces articles or things. There is also no dispute that the assessee carries on manufacturing process without the aid of power, for which purpose the assessee avails of the services of twenty or more workers. The only question that arises is

that in view of the fact that the workers are engaged on contract labour basis, whether it can be said that the industrial undertaking of the assessee employs twenty or more workers in the manufacturing process carried on by it.

10. As can be seen, the term employed by the statute is "employs" twenty or more workers. The plain dictionary meaning of the said term 'employ' is to use the services of a person in return for payment. Clause (iv) of Section 80I(2) of the Act does not contemplate the additional requirements which have been read into the same by the Commissioner of Income Tax. As long as the industrial undertaking manufactures articles or things; and where the manufacturing process is carried on without the aid of power, it employs twenty or more workers, the requirements of the provision are fulfilled. When the provision is clear and unambiguous, there is no need to read anything more into the same, as is sought to be done by the revenue.

11. This Court in the case of *Commissioner of Income Tax Vs. V.B.Narania and Co.*, (2001) 252 ITR 884, where in the facts of the said case the Income Tax Officer has disallowed the claim for deduction under Sections 80HH and 80J of the Act, on the ground that the assessee got certain processes done from outsiders on the piece-meal basis and that the assessee had not provided regular employment to any person in its manufacturing process, held that the Tribunal was right in coming to the conclusion that the persons doing the work were employed by the assessee because the assessee was controlling not only the work to be done by those persons but also the manner of doing the work. The Court further held that the Assessing Officer and the Appellate Assistant Commissioner were not right in holding that the concerned persons were not employees because they were being paid on piece-rate basis or job work basis. In the present case the Tribunal has found that the assessee has the ultimate control over the

affairs of the establishment and that the industrial undertaking of the assessee was employing more than 20 workers through the contractor. Applying the principles laid down by the aforesaid decision to the facts of the present case it cannot be said that the Tribunal was not justified in holding that the assessee is employing 20 workers in its industrial undertaking as contemplated by the provisions of clause (iv) of sub-section (2) of Section 80I of the Act.

12. Accordingly, it is held that the Tribunal is right in law and on facts in setting aside the order made by the Commissioner of Income Tax under Section 263 of the Act, whereby he had directed the I.T.O., to pass a fresh order withdrawing the deduction under Section 80I of the Act. The reference is, therefore, answered in the affirmative i.e in favour of the assessee and against the revenue.

13. The reference stands disposed of accordingly
with no order as to costs.

(D.A.Mehta, J)

(H.N.Devani,J)

m.m.bhatt